

Federal Retirement Thrift Investment Board

§ 1690.14

TSP account” or “borrow or withdraw funds from the ward’s TSP account.”

[69 FR 29852, May 26, 2004]

§ 1690.14 Checks made payable to the Thrift Savings Plan.

(a) *Accord and satisfaction.* The TSP does not agree to accept less than the total amount due by negotiating an instrument such as a check, share draft or money order with a restrictive leg-

end on it (such as “payment in full” or “submitted in full satisfaction of claims”), or by negotiating an instrument that is conditionally tendered to the TSP with an offer of compromise.

(b) *TSP Payment Address.* The TSP has established an address for the receipt of specified TSP payments. The TSP will not answer correspondence mailed to that payment address.

[70 FR 32218, June 1, 2005]

CHAPTER VIII—OFFICE OF SPECIAL COUNSEL

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PART 1800—FILING OF COMPLAINTS AND ALLEGATIONS

Sec.

1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.

1800.2 Filing disclosures of information.

1800.3 Advisory opinions.

AUTHORITY: 5 U.S.C. 1212(e).

§ 1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.

(a) *Prohibited personnel practices.* The Office of Special Counsel (OSC) has investigative jurisdiction over the following prohibited personnel practices committed against current or former Federal employees and applicants for Federal employment:

(1) Discrimination, including discrimination based on marital status or political affiliation (*see* §1810.1 of this chapter for information about OSC's deferral policy);

(2) Soliciting or considering improper recommendations or statements about individuals requesting, or under consideration for, personnel actions;

(3) Coercing political activity, or engaging in reprisal for refusal to engage in political activity;

(4) Deceiving or obstructing anyone with respect to competition for employment;

(5) Influencing anyone to withdraw from competition to improve or injure the employment prospects of another;

(6) Granting an unauthorized preference or advantage to improve or injure the employment prospects of another;

(7) Nepotism;

(8) Reprisal for whistleblowing (whistleblowing is generally defined as the disclosure of information about a Federal agency by an employee or applicant who reasonably believes that the information shows a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety);

(9) Reprisal for:

(i) Exercising certain appeal rights;

(ii) Providing testimony or other assistance to persons exercising appeal rights;

(iii) Cooperating with the Special Counsel or an Inspector General; or

(iv) Refusing to obey an order that would require the violation of law;

(10) Discrimination based on personal conduct not adverse to job performance;

(11) Violation of a veterans' preference requirement; and

(12) Taking or failing to take a personnel action in violation of any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. 2301(b).

(b) *Other prohibited activities.* OSC also has investigative jurisdiction over allegations of the following prohibited activities:

(1) Violation of the Federal Hatch Act at title 5 of the U.S. Code, chapter 73, subchapter III;

(2) Violation of the state and local Hatch Act at title 5 of the U.S. Code, chapter 15;

(3) Arbitrary and capricious withholding of information prohibited under the Freedom of Information Act at 5 U.S.C. 552 (except for certain foreign and counterintelligence information);

(4) Activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking;

(5) Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action (unless the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure); and

(6) Violation of uniformed services employment and reemployment rights under 38 U.S.C. 4301, *et seq.*

(c) *Procedures for filing complaints alleging prohibited personnel practices or other prohibited activities (other than the Hatch Act).* (1) Current or former Federal employees, and applicants for Federal employment, may file a complaint with OSC alleging one or more prohibited personnel practices, or other prohibited activities within OSC's investigative jurisdiction. Form OSC-11

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(“Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity”) must be used to file all such complaints (except those limited to an allegation or allegations of a Hatch Act violation - *see* paragraph (d) of this section for information on filing Hatch Act complaints).

(2) Part 2 of Form OSC-11 must be completed in connection with allegations of reprisal for whistleblowing, including identification of:

- (i) Each disclosure involved;
- (ii) The date of each disclosure;
- (iii) The person to whom each disclosure was made; and
- (iv) The type and date of any personnel action that occurred because of each disclosure.

(3) Except for complaints limited to alleged violation(s) of the Hatch Act, OSC will not process a complaint filed in any format other than a completed Form OSC-11. If a filer does not use Form OSC-11 to submit a complaint, OSC will provide the filer with information about the form. The complaint will be considered to be filed on the date on which OSC receives a completed Form OSC-11.

(4) Form OSC-11 is available:

- (i) By writing to OSC, at: Office of Special Counsel, Complaints Examining Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;
- (ii) By calling OSC, at: (800) 872-9855 (toll-free), or (202) 653-7188 (in the Washington, DC area); or
- (iii) Online, at: <http://www.osc.gov> (to print out and complete on paper, or to complete online).

(5) A complainant can file a completed Form OSC-11 with OSC by any of the following methods:

- (i) By mail, to: Office of Special Counsel, Complaints Examining Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;
- (ii) By fax, to: (202) 653-5151; or
- (iii) Electronically, at: <http://www.osc.gov>.

(d) *Procedures for filing complaints alleging violation of the Hatch Act.* (1) Complaints alleging a violation of the Hatch Act may be submitted in any written form, but should include:

- (i) The complainant’s name, mailing address, telephone number, and a time when OSC can contact that person

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about his or her complaint (unless the matter is submitted anonymously);

(ii) The department or agency, location, and organizational unit complained of; and

(iii) A concise description of the actions complained about, names and positions of employees who took the actions, if known to the complainant, and dates of the actions, preferably in chronological order, together with any documentary evidence that the complainant can provide.

(2) A written Hatch Act complaint can be filed with OSC by any of the methods listed in paragraph (c)(5)(i)–(iii) of this section.

[68 FR 66695, Nov. 28, 2003]

§ 1800.2 Filing disclosures of information.

(a) *General.* OSC is authorized by law (at 5 U.S.C. 1213) to provide an independent and secure channel for use by current or former Federal employees and applicants for Federal employment in disclosing information that they reasonably believe shows wrongdoing by a Federal agency. OSC must determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. If it does, the law requires OSC to refer the information to the agency head involved for investigation and a written report on the findings to the Special Counsel. The law does not authorize OSC to investigate the subject of a disclosure.

(b) *Procedures for filing disclosures.* Current or former Federal employees, and applicants for Federal employment, may file a disclosure of the type of information described in paragraph (a) of this section with OSC. Such disclosures must be filed in writing (including electronically - *see* paragraph (b)(3)(iii) of this section).

(1) Filers are encouraged to use Form OSC-12 (“Disclosure of Information”) to file a disclosure of the type of information described in paragraph (a) of

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this section with OSC. This form provides more information about OSC jurisdiction, and procedures for processing whistleblower disclosures. Form OSC-12 is available:

(i) By writing to OSC, at: Office of Special Counsel, Disclosure Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;

(ii) By calling OSC, at: (800) 572-2249 (toll-free), or (202) 653-9125 (in the Washington, DC area); or

(iii) Online, at: <http://www.osc.gov> (to print out and complete on paper, or to complete online).

(2) Filers may use another written format to submit a disclosure to OSC, but the submission should include:

(i) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when OSC can contact that person about his or her disclosure;

(ii) The department or agency, location and organizational unit complained of; and

(iii) A statement as to whether the filer consents to disclosure of his or her identity by OSC to the agency involved, in connection with any OSC referral to that agency.

(3) A disclosure can be filed in writing with OSC by any of the following methods:

(i) By mail, to: Office of Special Counsel, Disclosure Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;

(ii) By fax, to: (202) 653-5151; or

(iii) Electronically, at: <http://www.osc.gov>.

[68 FR 66696, Nov. 28, 2003]

§ 1800.3 Advisory opinions.

The Special Counsel is authorized to issue advisory opinions only about political activity of state or local officers and employees (under title 5 of the United States Code, at chapter 15), and political activity of Federal officers and employees (under title 5 of the United States Code, at chapter 73, subchapter III). A person can seek an advisory opinion from OSC by any of the following methods:

(a) By phone, at: (800) 854-2824 (toll-free), or (202) 653-7143 (in the Washington, DC area);

(b) By mail, to: Office of Special Counsel, Hatch Act Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;

(c) By fax, to: (202) 653-5151; or

(d) By e-mail, to: hatchact@osc.gov.

[68 FR 66697, Nov. 28, 2003]

PART 1810—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

AUTHORITY: 5 U.S.C. 1212(e).

§ 1810.1 Investigative policy in discrimination complaints.

The Special Counsel is authorized to investigate allegations of discrimination prohibited by law, as defined in 5 U.S.C. 2302(b)(1). Since procedures for investigating discrimination complaints have already been established in the agencies and the Equal Employment Opportunity Commission, the Special Counsel will normally avoid duplicating those procedures and will defer to those procedures rather than initiating an independent investigation.

[54 FR 47342, Nov. 14, 1989]

PART 1820—PUBLIC INFORMATION

Sec.

1820.1 Public list.

1820.2 Procedures for obtaining records under the Freedom of Information Act.

1820.3 Categories of requesters under the Freedom of Information Act.

1820.4 Free or partially free search time and partially free copying.

1820.5 Waiver or reduction of fees.

1820.6 Fees to be charged.

1820.7 Payments and collections.

1820.8 Appeals.

1820.9 Disclosures by authorized officials.

AUTHORITY: 5 U.S.C. 552(a)(3), 552(a)(4), 1212(g), 1219.

SOURCE: 54 FR 47342, Nov. 14, 1989, unless otherwise noted.

§ 1820.1 Public list.

(a) Pursuant to 5 U.S.C. 1219, the Special Counsel maintains and makes available to the public a list of:

(1) Noncriminal matters referred to heads of agencies under 5 U.S.C. 1213 (c)

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and (g)(1), and reports received as a result of such referrals;

(2) Matters referred by the Special Counsel to heads of agencies under 5 U.S.C. 1215(c)(2); and

(3) Matters referred to heads of agencies under 5 U.S.C. 1214(e), together with certifications from the heads of agencies under such subsection.

(b) The list is available to the public between 8:30 a.m. and 5 p.m. weekdays (except legal holidays) in the Office of Special Counsel, 1730 M Street NW., Suite 201, Washington, DC 20036-4505.

[55 FR 47342, Nov. 14, 1989, as amended at 55 FR 47839, Nov. 16, 1990; 59 FR 64843, Dec. 16, 1994; 65 FR 81325, Dec. 26, 2000]

§ 1820.2 Procedures for obtaining records under the Freedom of Information Act.

Requests for records shall be made in writing. Requests should be addressed to the Office of Special Counsel, 1730 M Street NW., Suite 201, Washington, DC 20036-4505. Requests must be clearly and prominently marked “Freedom of Information Act Request” on both the envelope and the letter.

[54 FR 47342, Nov. 14, 1989, as amended at 59 FR 64843, Dec. 16, 1994; 65 FR 81325, Dec. 26, 2000]

§ 1820.3 Categories of requesters under the Freedom of Information Act.

There are four categories of requesters:

(a) *Commercial use requesters.* These requesters seek information for themselves or on behalf of someone else for a use or purpose that furthers commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. A requester will not be presumed to be a “commercial use requester” merely by submitting a request on corporate letterhead without further explanation of the use to which he plans to put the requested information. Similarly, a request submitted on the letterhead of a nonprofit organization without further explanation will not be presumed to be for a noncommercial purpose. The Office of Special Counsel will seek clarification from the requester where there is a reasonable doubt as to the intended use of the information.

(b) *Educational and noncommercial scientific institution requesters.* (1) An “educational institution” requester is associated with a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of vocational or professional education, that operates a program or programs of scholarly research, and seeks the information for a scholarly or scientific research goal of the institution, rather than for an individual goal.

(2) A “noncommercial scientific institution” requester is associated with an institution that is not operated on a “commercial” basis (as that term is defined by paragraph (a) of this section), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(c) *News media requesters.* These requesters actively gather news for entities that are organized and operated to publish or broadcast news to the public. Freelance journalists may be news media requesters if they can demonstrate a solid basis for expecting publication through a news organization (such as by producing a publication contract or citing their past publication records), even though not actually employed by it. “News” means information about current events or information that would be of current interest to the public. News media “entities” include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public.

(d) All other requesters.

§ 1820.4 Free or partially free search time and partially free copying.

(a) *Free search time and partially free copying.* Educational and noncommercial scientific institution requesters and news media requesters who are requesting records for noncommercial use are entitled to free copying for the first 100 pages and free search time.

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(b) *Partially free search time and partially free copying.* Requesters who are not commercial use requesters, educational or noncommercial scientific institution requesters, or news media requesters are “all other requesters”, and are entitled to two hours of free search time and free copying for the first 100 pages. Requests from record subjects for records about themselves filed in a system of records will continue to be treated under the fee provisions of the Privacy Act, which permits the assessment of fees only for copying.

§ 1820.5 Waiver or reduction of fees.

(a) The Associate Special Counsel for Investigation, the Deputy Associate Special Counsel for Prosecution, the Associate Special Counsel for Prosecution, the Deputy Special Counsel, and the Special Counsel may authorize waiver or reduction of fees that could otherwise be assessed if disclosure of the information requested:

(1) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and

(2) Is not primarily in the commercial interest of the requester.

(b) Satisfaction of paragraph (a)(1) of this section will be determined by all of the following:

(1) Whether the subject of the requested records concerns “the operations or activities of the Government.” The requested records concern identifiable operations or activities of the Government, and the connection between the records and the operations or activities is direct and clear, not remote or attenuated;

(2) Whether disclosure is “likely to contribute” to an understanding of Government operations or activities. An analysis of the substantive content of the releasable portions of the requested records reveals meaningfully informative information on the operations or activities of the Government that is not already in the public domain in duplicative or substantially identical form;

(3) Whether disclosure will contribute to “public understanding.” Considering the identity of the requester and his qualifications to make use of the information, disclosure will contribute to

the understanding of the public at large, and not to the individual understanding of the requester or a narrow segment of interested persons; and

(4) Whether the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities. By an objective standard, the disclosure is likely to enhance the general public’s understanding of the subject matter in question more than minimally.

(c) Satisfaction of paragraph (a)(2) of this section will be determined by both of the following:

(1) Whether the requester has a commercial interest to be furthered by the disclosure. The requester does not seek to further a commercial, trade, or profit interest, as those terms are commonly understood; and

(2) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, compared to the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” If the requester has a commercial interest, that interest is not greater than the public interest to be served by disclosure of the requested records.

§ 1820.6 Fees to be charged.

(a) Requests for records are subject to the following fees:

(1) *Commercial use requesters.* For search, review, and copying: Photocopies per page, \$0.25. Manual record search, \$2.50 per quarter hour if conducted by a clerical employee; \$5.00 per quarter hour if conducted by a professional or managerial employee. Search fees may be assessed even if the records in question are not located or if the records located are determined to be exempt from disclosure.

(2) *Educational and noncommercial scientific institution requesters, news media requesters.* For copying only: Photocopies per page, \$0.25, excluding the first 100 pages.

(3) *All other requesters.* For search and copying only: Photocopies per page (excluding the first 100 pages), \$0.25. Manual record search (excluding the first two hours), \$2.50 per quarter hour if conducted by a clerical employee; \$5.00

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per quarter hour if conducted by a professional or managerial employee.

(b) *Method of search.* (1) Any “search”, which includes all time spent looking for material that is responsive to a request, will be done in the most efficient and least expensive manner in order to minimize costs for both the agency and the requester.

(2) For researches made by computer, costs will be assessed when the hourly cost of operating the central processing unit and the operator’s hourly salary plus 16 percent equals the equivalent dollar amount of two hours of salary of the person performing the search.

(c) *Review charges.* Only commercial use requesters will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. These charges will be assessed only for initial review (*i.e.*, the review undertaken when first analyzing the applicability of a specific exemption to a particular record or portion of record), and not for review at the administrative appeal level of an exemption already applied. However, charges will be assessed for a second review of records or portions of records withheld in full under an exemption which is subsequently determined not to apply in order to determine the applicability of other exemptions not previously considered. Review charges shall not include costs incurred in resolving issues of law or policy that may be raised in the course of processing a request.

(d) *Copying.* A “page” of copying refers to a paper copy of standard size, normally 8½”x11” or 11x14”. However, copies may also take the form of microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(e) *Nonassessment of fees.* No fees will be assessed to any requester, including commercial use requesters, if the cost of routine collection and processing of the fee would be equal to or greater than the fee itself. To make this determination, the OSC will consider the administrative costs of receiving and recording a requester’s remittance and processing the fee for deposit.

(f) *Other charges.* Complying with requests for special services, such as certification of records as true copies and

sending records by special methods (*e.g.*, express mail) is entirely at the discretion of the Office. Since neither the Freedom of Information Act nor its fee structure covers these kinds of services, the OSC will assess fees to recover the full costs of providing these services should the Office elect to provide them.

(g) *Aggregating requests.* If the Office of Special Counsel reasonably believes that a requester or a group of requesters acting in concert is filing a series of requests for the purpose of evading the assessment of fees, the OSC may aggregate the requests and assess fees accordingly. One element to be considered in determining reasonable belief is the time period within which the requests are filed. Multiple requests of this type filed within a 30-day period may be presumed to have been made to avoid fees. In no case will the Office aggregate requests on unrelated subjects from one requester.

(h) *Advance notice of fees.* If it is likely that fees will exceed \$25, the requester will first be notified of the estimated amount, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The notice will offer the requester the opportunity to confer with personnel of the Office of the Special Counsel with the object of reformulating the request to meet his or her needs at a lower cost.

§ 1820.7 Payments and collections.

(a) *Payments.* Payment of fees shall be made by check or money order payable to the United States Treasury.

(b) *Advance payments.* A requester is not required to make an advance payment unless:

(1) The OSC estimates or determines that the requester may be required to pay fees in excess of \$250, in which case the requester will be notified of the estimated cost. The requester must then furnish satisfactory assurance of full payment if the requester has a history of prompt payment of Freedom of Information Act fees. If the requester has no history of payment, then the requester may be required to furnish an advance payment up to the full estimated cost; or

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(2) The requester has previously failed to pay a fee assessed in a timely fashion (*i.e.*, within 30 days of the date of billing), in which case the requester may be required to—

(i) Pay the full amount owed plus any applicable interest as provided in paragraph (d) of this section, or prove payment of the alleged amount in arrears, and

(ii) Make an advance payment of the full amount of the estimated cost before a new or pending request will be processed.

(c) *Effect of nonpayment.* When the OSC acts under either paragraph (b)(2)(i) or (b)(2)(ii) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) of the Freedom of Information Act will begin only after the fee payments described above have been received.

(d) *Interest charges.* Interest may be charged to any requester who fails to pay fees assessed within 30 days of the date of billing. Interest will be assessed on the 31st day following the day on which the bill for fees was sent, and will be calculated at the rate prescribed in 31 U.S.C. 3717. Receipt of fees, even if not processed, will stay the accrual of interest.

(e) *Collections.* If the OSC deems it appropriate in order to encourage repayment of fees assessed in accordance with these regulations, the OSC will use the procedures authorized by the Debt Collection Act of 1982 (Public Law No. 97-365), including disclosure to consumer reporting agencies and use of collection agencies.

§ 1820.8 Appeals.

Any denial, in whole or in part, of a request for records of the Office of Special Counsel shall advise the requester of his right to appeal the denial to the Special Counsel or the Special Counsel's designee. The requester shall submit his appeal in writing within 30 days of the denial. The appeal shall be addressed to the Special Counsel at 1730 M Street NW., Suite 201, Washington, DC 20036-4505. When a request is denied on appeal, the requester shall be

advised of his right to seek judicial review.

[54 FR 47342, Nov. 14, 1989, as amended at 59 FR 64843, Dec. 16, 1994; 65 FR 81325, Dec. 26, 2000]

§ 1820.9 Disclosures by authorized officials.

No employee or former employee of the Office of Special Counsel shall, in response to a demand of a court or other authority, produce or disclose any information or records acquired as part of the performance of his official duties or because of his official status without the prior approval of the Special Counsel or the Special Counsel's duly authorized designee.

PART 1830—PRIVACY

Sec.

1830.1 Access to records and identification.

1830.2 Medical records.

1830.3 Requests for amendment of records.

1830.4 Appeals.

1830.5 Exemptions.

AUTHORITY: 5 U.S.C. 552a(f), 1212(g).

SOURCE: 54 FR 47344, Nov. 14, 1989, unless otherwise noted.

§ 1830.1 Access to records and identification.

(a) Individuals may request access to records pertaining to them that are maintained as described in the Privacy Act, 5 U.S.C. 552a, by addressing an inquiry to the Office of Special Counsel either by mail or by appearing in person at the Office of Special Counsel at 1730 M Street, NW., Suite 201, Washington, DC 20036-4505, during business hours on a regular business day. Requests in writing should be clearly and prominently marked "Privacy Act Request." Requests for copies of records shall be subject to duplication fees set forth in § 1820.6 of this chapter.

(b) Individuals making a request in person shall be required to present satisfactory proof of identity, preferably a document bearing the individual's photograph. Requests by mail or submitted other than in person should contain sufficient information to enable the Office of Special Counsel to determine that the requester and the subject of the record are one and the

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same. To assist in this process, individuals should submit their names and addresses, dates and places of birth, social security number, and any other known identifying information such as an agency file number or identification number and a description of the circumstances under which the records were compiled.

[54 FR 47344, Nov. 14, 1989, as amended at 59 FR 64844, Dec. 16, 1994; 65 FR 81325, Dec. 26, 2000]

§ 1830.2 Medical records.

When a request for access involves medical records that are not otherwise exempt from disclosure, the requesting individual may be advised, if it is deemed necessary, that the records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the physician will be permitted to review the records or to receive copies by mail upon proper verification of identity.

§ 1830.3 Requests for amendment of records.

Individuals may request amendment of records pertaining to them that are subject to this part. Requests should be addressed, in writing, to the Special Counsel at 1730 M Street, NW., Suite 201, Washington, DC 20036-4505, and be clearly and prominently marked "Privacy Act Request." Requests for amendment should include identification of records together with a statement of the basis for the requested amendment and all available supporting documents and materials. Requests for amendment shall be acknowledged not later than 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt and a determination on the request shall be made promptly.

[54 FR 47344, Nov. 14, 1989, as amended at 59 FR 64844, Dec. 16, 1994; 65 FR 81325, Dec. 26, 2000]

§ 1830.4 Appeals.

When a request for access or amendment has been denied, in whole or in part, the requester shall be advised of his right to appeal to the Special Counsel or the Special Counsel's designee. The requester shall submit his appeal in writing within 30 days of the denial.

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A final determination on the appeal shall be issued within 30 days (excluding Saturdays, Sundays, and legal holidays) after receipt. Where unusual circumstances prevent a determination within that time period, the time for a determination may be extended an additional 30 working days.

§ 1830.5 Exemptions.

The Office of Special Counsel will claim exemptions from the provisions of the Privacy Act at subsections (c)(3) and (d) as permitted by subsection (k) for records subject to the Act that fall within the category of investigatory material described in paragraphs (2) and (5) and testing or examination material described in paragraph (6) of that subsection. The exemptions for investigatory material are necessary to prevent frustration of inquiries into allegations of prohibited personnel practices or political activity and to protect identities of confidential sources of information. The exemption for testing or examination material is necessary to prevent the disclosure of information which would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures. The Office of Special Counsel also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request and the Office of Special Counsel may refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

PART 1840—SUBPOENAS

AUTHORITY: 5 U.S.C. 1212(e).

§ 1840.1 Service of subpoenas by mail.

In addition to all other methods of authorized service, an Office of Special Counsel subpoena may be served by mailing a copy to the person at his or her residence or place of business by certified or registered mail.

[54 FR 47345, Nov. 14, 1989]

**PART 1850—ENFORCEMENT OF
NONDISCRIMINATION ON THE
BASIS OF HANDICAP IN PRO-
GRAMS OR ACTIVITIES CON-
DUCTED BY THE OFFICE OF SPE-
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AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25881, 25885, July 8, 1988, unless otherwise noted. Redesignated at 54 FR 47345, Nov. 14, 1989.

§ 1850.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1850.102 Application.

This regulation (§§1850.101–1850.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 1850.103 Definitions.

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase: (1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by §1850.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 1850.104–1850.109 [Reserved]

§ 1850.110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1850.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1850.112–1850.129 [Reserved]

§ 1850.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in af-

fording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1850.131–1850.139 [Reserved]

§ 1850.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1850.141–1850.148 [Reserved]

§ 1850.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1850.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1850.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1850.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock,

or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 1850.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 1850.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons,

including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1850.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 1850.152–1850.159 [Reserved]

§ 1850.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall

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give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1850.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handi-

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caps receive the benefits and services of the program or activity.

§§ 1850.161–1850.169 [Reserved]

§ 1850.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Managing Director for Operations shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director for Management, Office of the Special Counsel, 1730 M Street, NW., Suite 201, Washington, DC 20036-4505.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

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(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1850.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25881 and 25885, July 8, 1988, as amended at 53 FR 25881, July 8, 1988. Redesignated and amended at 54 FR 47345, Nov. 14, 1989; 59 FR 64844, Dec. 16, 1994; 65 FR 81325, Dec. 26, 2000]

§§ 1850.171–1850.999 [Reserved]